

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

| | | |
|--------------------------------|---|--------------------|
| OLYMPIC STEAKHOUSE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. _____ |
| |) | |
| WESTERN WORLD INSURANCE |) | JURY DEMAND |
| GROUP, STEVE NASH, and |) | |
| JS HELD, LLC |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL

Without waiving any available defenses, including, without limitation, lack of jurisdiction, improper venue, statute of limitations, insufficient process, or insufficient service of process, Defendant Western World Insurance Group (“Western World”), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this Notice of Removal of the above-described action to the United States District Court for the Western District of Tennessee, from the Chancery Court for Crockett County at Alamo, where the action is now pending. Pursuant to all of Western World’s rights, Western World states as follows:

A. PROCEDURAL BACKGROUND

1. This cause of action was commenced by Olympic Steakhouse (“Plaintiff”) on February 24, 2023, in the Chancery Court for Crockett County at

Alamo, Tennessee, Case No. 10852. The documents attached as Exhibit A constitute all the process and pleadings served and filed in this action to date, pursuant to 28 U.S.C. § 1446(a).

2. Thereafter, Western World received service on March 6, 2023. Thus, removal is timely filed under 28 U.S.C § 1446(b).

3. This Notice of Removal is filed in the United States District Court for the Western District of Tennessee, within the district embracing the place where the state court case was filed as required by 28 U.S.C. § 1332 and 1441(a).

4. Promptly after the filing of this Notice, Western World is serving a copy of this Notice of Removal on counsel for the Plaintiff and will file a copy with the Clerk of the Chancery Court of Crockett County at Alamo, Tennessee, as required by 28 U.S.C. § 1446(d).

B. AMOUNT IN CONTROVERSY

5. The complaint sought damages for an alleged breach of contract and violations of the Fraudulent Insurance Act. Specifically, the Plaintiff contends that it is entitled to compensatory damages in an amount of “no less than five million dollars.” (Compl. pg. 11). Based upon the Complaint, the claims of compensatory damages exceed the jurisdictional threshold of \$75,000.

C. DIVERSITY OF THE PARTIES

6. At the time of the commencement of this action in state court, and since that time, Western World has been a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 300 Kimball Drive, Suite 500, Parsippany, New Jersey 07054. Thus, Western World is not a citizen of the State of Tennessee.

7. Based upon information and belief, Plaintiff Olympic Steakhouse is a resident of Tennessee and owns the insured property located at 5711 Hwy 412 Bells, Tennessee 38006.

8. The Plaintiff's Complaint alleges that co-Defendants JS Held, LLC, and Steve Nash (hereinafter referred to as "JS Held Defendants") are citizens of Tennessee with a business address of 1441 New Hwy 96 W, Suite 2, 202, Franklin, TN 37064. However, as fully set forth below, the citizenship of the JS Held Defendants should be disregarded.

9. Western World avers that Plaintiff has fraudulently joined the JS Held Defendants in this action in an effort to defeat diversity jurisdiction in this Court in that at all times concerning this matter the JS Held Defendants were not a party to the insurance contract. The only claim brought against the JS Held Defendants is for an alleged violation of the Fraudulent Insurance Act found at Tenn. Code Ann. § 56-53-103(a)(1). However, a claim under this Act can only be brought against an *insurer* in the context of a solicitation for sale of an insurance policy. This Act does

not provide a cause of action against any engineering firm or individual working on behalf of that insurer during the claims process. *See Green v. Mut. Of Omaha Ins. Co.*, 2011 U.S. Dist. LEXIS 3538 (W.D. TN. January 13, 2011). Western World avers that Plaintiff has stated no colorable cause of action against the JS Held Defendants. Except for the fraudulent joinder of the JS Held Defendants to this action, this action only involves citizens and residents of different states. At the time of the commencement of this action in the Chancery Court of Crocket County at Alamo, Tennessee, and since that time, Plaintiff was and still is a resident of Tennessee. Western World was and still is a corporation incorporated and organized in a state other than Tennessee, with its principal place of business in a state other than the state of Tennessee.

10. This Court has original jurisdiction over the above-styled action pursuant to the provisions of 28 U.S.C. § 1332 (a) and (c) because Western World is not a citizen or resident of the State of Tennessee, and because the JS Held Defendants were fraudulently joined as defendants by Plaintiff in an effort to defeat the jurisdiction of this court, and because the amount in controversy exceeds \$75,000.00 exclusive of interests and costs. Therefore, this removal is proper pursuant to 28 U.S.C. § 1441 (a).

D. CONCLUSION

11. As evidenced by the Plaintiff's Complaint, the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs, and but for the fraudulent joinder of the parties, is between citizens of different States.

12. This Court has original jurisdiction under 28 U.S.C. § 1332(a) and, accordingly, is one which may be removed to this Court by Western World pursuant to the provisions of 28 U.S.C. § 1441.

WHEREFORE, PREMISES CONSIDERED, Defendant Western World Insurance Group prays the filing of this Notice of Removal, the filing of written notice to Plaintiff, and the filing of a copy of this Notice of Removal with the Clerk of the Chancery Court of Crockett County at Alamo, Tennessee, shall justify removal of said suit to this Honorable Court.

Respectfully submitted this 3rd day of April, 2023.

Respectfully submitted,

CARR ALLISON

BY: /s/ Jordan D. Watson
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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2023, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Drayton Berkley, Esq.
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/s/ Jordan D. Watson
OF COUNSEL